

**United States Department of Labor
Employees' Compensation Appeals Board**

JOHN F. CASTRO, Appellant

and

**DEPARTMENT OF THE NAVY, U.S. NAVAL
STATION ROOSEVELT ROADS, PR, Employer**

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**Docket No. 03-1653
Issued: May 14, 2004**

Appearances:

John F. Castro, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 16, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 21, 2003 merit decision which denied his claim finding that it did not occur in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has established that he sustained an injury in the performance of duty on March 13, 2003.

FACTUAL HISTORY

On March 21, 2003 appellant, then a 38-year-old fuel distribution systems worker, filed a traumatic injury claim alleging that on March 13, 2003 he sustained head, lung, heart, rib,

chest and lower back injuries when he was involved in a motor vehicle accident while on his way home from his job.¹ He indicated that the vehicle had rolled over on him.

The employing establishment controverted appellant's claim contending that he was not in the performance of his duties when injured, but was on his way home.

By letter dated April 11, 2003, the Office requested further information regarding the accident and the circumstances involved, and it requested rationalized medical evidence documenting appellant's injuries.

Appellant submitted medical care records, a personal statement addressing the accident and the police/base security reports regarding the motor vehicle accident. The medical records indicated that appellant was treated on base following a roll-over motor vehicle accident and the base security reports wrote "yes," indicating that the incident occurred on the military installation.

On April 25, 2003 the Office received appellant's answers to its questions, a medical treatment note, an attending physician's report and paperwork regarding his hospital medical treatment.²

By decision dated May 21, 2003, the Office denied appellant's claim, finding that the motor vehicle accident did not occur in the performance of duty. The Office noted that the accident was after duty hours and appellant was not performing any duties for his employer.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁴ The phrase "sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁵ "Arising in the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonably be expected to be in connection with his

¹ Although the Office stated in its decision that appellant was on a public street, the record establishes that appellant had not yet left the naval base property.

² Appellant referred to his statement of how the injury occurred, the police report and the hospital report, as all being in the package. He noted that he had punched out at 15:35 hours, five minutes before the accident. Appellant indicated that he worked that day as part of his normal schedule, he indicated that his supervisor had immediate knowledge of the accident.

³ 5 U.S.C. § 8101-8193.

⁴ *Id.* at § 8102(a).

⁵ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

employment; and (3) while he was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.⁶

It is a general rule of workers' compensation law that, as to employees having fixed hours and place of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours, or at lunch time is compensable.⁷

In applying this rule to the provisions of the Act, the Board has stated:

"The 'premises' of the employer, as that term is used in workmens' compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of the legal title."⁸

"The term 'premises' as it is generally used in workers' compensation law, is not synonymous with 'property.' The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases 'premises' may include all the 'property' owned by the employer; in other cases even though the employer does not have ownership and control of the place where the injury occurred, the place is nevertheless considered part of the 'premises.' The term premises, however, always includes that part of the property necessary for the conduct of the business."⁹

The Board has also stated:

"There must exist a closer nexus between the [f]ederal property on which an injury occurs and the use made and benefit received by the employing establishment from that particular piece of Federal property before it can be considered to be part of the employing establishment's premises."¹⁰

⁶ *Eugene G. Chin*, 39 ECAB 598 (1988). See *Charles Crawford*, 40 ECAB 474 (1989) (the phrase "arising out of and in the course of employment" encompasses not only the concept that the injury occurred in the work setting, but also the causal concept that the employment caused the injury). See also *Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

⁷ See *Emma Varnerin, M.D.*, 14 ECAB 253 (1963).

⁸ *Wilmar Lewis Prescott*, 22 ECAB 318 (1971).

⁹ *Id.*; see also *Alvina B. Piller*, 7 ECAB 444 (1955).

¹⁰ See *William L. McKenney*, 31 ECAB 861 (1980); see also *Dollie J. Braxton*, 37 ECAB 186 (1985).

ANALYSIS

In *Emma Varnerin, M.D.*,¹¹ appellant, a physician, fell and sustained injury on the premises of a Department of Veterans Affairs Hospital. The Board noted that after appellant left her living quarters on the premises to go to work, she was in the performance of duty while walking on government property toward that portion of the premises where her duties were to be performed, regardless of whether she lived on the hospital grounds for her own convenience. The Board stated that appellant could be treated no differently than an employee who enters into the performance of duty when reaching the property of the employing establishment on the way to work.

In *Nona J. Noel*,¹² appellant, an employee at a military installation, arrived one and one-half hours prior to the start of her workday to avoid heavy traffic and to eat breakfast at the noncommissioned officer's club where she sustained an injury. The Board held that "although the incident here occurred on the premises, it did not occur during the regular workday or during a lunch period as a regular incident of employment."¹³ The Board found that the act of having breakfast, coupled with the length of time appellant arrived at the employing establishment prior to her official starting time, and the fact that appellant arrived early to avoid heavy traffic, placed the activity in this case outside the scope of the employment.

In the instant case, the record reveals that the internal roads of the base upon which appellant traveled at the time of his accident were an integral and necessary component of the business in which the employing establishment is engaged. These roads, which are under the exclusive control of the employing establishment, are used by employees who must travel between various buildings on the military reservation. As appellant's job assignment related to fuels distribution for the base, the entire military reservation was his working location, and he had to travel to various locations on the base to perform his job duties.

Moreover, employees such as appellant must travel the roads of the employing establishment installation when going to or coming from work, both before and after working hours and during lunch time; the use made and benefit received by the employing establishment from the particular piece of property is that employees arrive and leave the employing establishment, and conduct the business of the employing establishment, through the use of this property.

As travel upon the internal roads of the military reservation was an integral fact of appellant's employment, his injuries were sustained on the premises of the employing establishment.

In the present case, appellant had clocked out of his administrative building and left work five minutes earlier and was on his way home, but he had not yet reached the exit from the base

¹¹ *Supra* note 7.

¹² Docket No. 84-1471 (issued December 13, 1984).

¹³ *Id.*

when the motor vehicle accident occurred. Appellant is allotted a reasonable amount of time to leave the employing establishment's premises upon clocking out for the day without engaging in something incidental to his employment. The five-minute interval between clocking out and the accident was sufficient enough connection with his employment to bring it into the performance of duty as it evidently took longer than five minutes to travel off of the naval base premises.

CONCLUSION

Since appellant was injured only five minutes after clocking out and during his drive to the base gate, his injuries were sustained in the performance of duty,¹⁴ and he is entitled to medical and monetary benefits under the provisions of the Act. Under the circumstances described above, the Board finds that appellant has established that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2003 is hereby set aside and the case is remanded for payment of compensation.

Issued: May 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁴ See *Annette Stonework*, 35 ECAB 306 (1983).